

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

DECISION AND ORDER RE:  
PRELIMINARY HEARING

REINALDO RODRIGUEZ, a/k/a Tyson,

19-MY-620-MJP-9

Defendant.

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**APPEARANCES**

For the United States:

AUSA Sean C. Eldridge  
U.S. Attorney's Office  
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585-399-3953

For Defendant:

Mark A Foti, Esq.  
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**Pedersen, M.J.** The government filed a criminal complaint and supporting affidavit charging Defendant and nine codefendants with a violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B), and 21 U.S.C. § 846, for the period from November 2018 through May 2, 2019. The supporting affidavit, signed by Drug Enforcement Special Agent William Reichard, consists of 119 paragraphs over 54 pages.

Defendant's initial appearance on these charges occurred on May 20, 2019. The magistrate judge indicated he would release Defendant on conditions, and the government appealed. The district judge then ordered Defendant held in custody. Since then, the case has been adjourned several times. The Court set a date for a preliminary hearing for all ten defendants by Text Order entered on March 2, 2021

(ECF No. 267). All ten defendants requested an adjournment and the preliminary hearing date was then set for May 18, 2021 at 9:30 a.m. (Letter Order, ECF No. 273.)

On April 12, 2021, Defendant's sister died, and he requested to be released to attend her funeral. (Motion for Emergency Relief, ECF No. 274.) His request was denied by the district court.

Defendant and the government had been negotiating a resolution to this case and on May 18, 2021, the government proffered an approved plea offer pursuant to Fed. R. Crim. P. 11(c)(1)(C). Negotiations between counsel led the Assistant U.S. Attorney to believe that the preliminary hearing would not take place, although the Court's order setting the date and time for the hearing remained in place. Thus, at 9:30 a.m. on May 18, no witness was then available for the preliminary hearing.

The Court adjourned the hearing to 3:00 p.m. and at that time, the government withdrew its plea offer and presented the testimony of Special Agent Reichard. The government offered Exhibit 1, the complaint and affidavit, and used surveillance logs to refresh the recollection of the witness. Defense counsel cross-examined the witness but did not offer any exhibits. Following the 90-minute hearing, the Court adjourned to review the affidavit and its notes.

Federal Rule of Criminal Procedure 5.1 requires the government to show probable cause to believe an offense has been committed and the defendant committed it.

“Probable cause exists when the Government presents evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief that the accused committed the violation.... Proof of probable cause requires less evidence than the proof required to prove a violation - but more than bare


suspicion.” *Id.*, \*2.<sup>1</sup> “[P]robable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts”, *Illinois v. Gates*, 462 U.S. 213, 232 (1983), and “is a lower standard than preponderance of the evidence”. *Clark v. Astrue*, 602 F.3d 140, 147 (2d Cir. 2010). “All we have required is the kind of ‘fair probability’ on which reasonable and prudent people, not legal technicians, act.” *Florida v. Harris*, 568 U.S. 237, 244 (2013).

*United States v. Buterbaugh*, No. 17CR00203FPGJJM, 2021 WL 405887, at \*1 (W.D.N.Y. Feb. 5, 2021).

After carefully studying the affidavit in light of Special Agent Reichard’s testimony on direct and cross, the Court concludes that the government has shown probable cause for the charges. Accordingly, the Court orders that Defendant remain in custody and appear for further proceedings. Pursuant to the Speedy Trial Act, the Court excludes May 18, 2021, from the speedy trial/indictment clock, but does not exclude the time from this day forward. 18 U.S.C. § 3161(h)(1)(H).

SO ORDERED.

DATED: May 19, 2021  
Rochester, New York

  
MARK W. PEDERSEN  
United States Magistrate Judge

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<sup>1</sup> Citing to *United States v. Garcia*, No. 4:08-CR-328-06, 2014 WL 12819401 (S.D. Texas Sept. 23, 2014).